

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 23-90147
MOUNTAIN EXPRESS OIL COMPANY, . Chapter 11
et al., . 515 Rusk Street
Debtors. . Houston, TX 77002
. Thursday, March 23, 2023
. 2:00 p.m.

TRANSCRIPT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO
(A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL,
(II) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED PARTIES, (IV) MODIFYING
THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND
(VI) GRANTING RELATED RELIEF [105]
BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commenced at 2:00 p.m.)

2 THE COURT: Good afternoon, everyone. This is Judge
3 Jones. The time is two o'clock Central. Today is March the
4 23rd, 2023. This is the docket for Houston, Texas. Next on
5 this afternoon's docket, we have the jointly-administered cases
6 under Case Number 23-90147, Mountain Express Oil Company.

7 Folks, please don't forget to record your electronic
8 appearance today. If this is new for you, it's a quick trip to
9 my website, a couple of mouse clicks. You can do it at any
10 time prior to the conclusion of the hearing, but it is the
11 official way we note your appearance at today's hearing.

12 First time that you speak, if you choose to speak, if
13 you would please state your name and who you represent, that
14 serves as a good point of reference for the court reporting
15 folks in the event that a transcript request is made. We are
16 recording this afternoon using CourtSpeak. We'll get the audio
17 up on the docket shortly after the conclusion of the hearing.

18 If you came in right at two o'clock, I have activated
19 the hand raising feature. Number of you have already raised
20 your hand. I've gotten you unmuted. But for those of you who
21 know you're going to be speaking, if you'd go ahead and give me
22 a five star on your telephone, I'll get you unmuted now. And
23 obviously you can change your mind at any time.

24 With that, Mr. Pomerantz?

25 MR. POMERANTZ: Good afternoon, Your Honor. Jeff



1 Pomerantz of Pachulski Stang Ziehl & Jones, proposed counsel
2 for the debtors in possession. Can Your Honor hear me well?

3 THE COURT: Loud and clear, thank you.

4 MR. POMERANTZ: In the virtual courtroom for the
5 company are Mr. Wadud and Mr. Frady. They are participating by
6 phone, the debtors' cofounders and co-CEOs. Justin Martin, who
7 is the debtor's chief operating officer and Neil Lansing, who
8 is the debtor's chief general counsel. And also on the phone
9 are the two independent directors, Mr. (audio interference)
10 Barbarosh who you met before. Also in the virtual courtroom,
11 and who will be the witness this -- today's hearing to the
12 extent necessary, is Michael Healy of FTI Consulting, the
13 debtor's proposed chief restructuring officer, and also
14 Geoffrey Richards, a managing director of Raymond James, the
15 debtors' proposed investment banker.

16 THE COURT: All right.

17 MR. POMERANTZ: I'm joined by my partners,
18 Mr. Litvak, Henry Kevane, Jeff Dulberg, and by Ben Wallen as
19 well.

20 Your Honor, before I start on the emergency motion we
21 filed this morning, we've had an emergent set of issues arise
22 this morning that I wanted to apprise Your Honor about. I have
23 a rather unorthodox request of Your Honor to hopefully
24 alleviate the situation and you will tell me if that is
25 acceptable.



1 So as Your Honor knows, we have hundreds of
2 convenience stores around the country. The debtor operates a
3 number of them. We've had several of various vendors and
4 creditors, mostly representing local bottling companies, soft
5 drink companies, come into the debtor's convenience stores and
6 exercise self-help. Some have actually looked to take out the
7 vending machines. Others have threatened to take out the
8 coffee. This has caused extreme disruption at the stores and
9 has obviously made the employees who are running these stores
10 quite unsafe. But we believe that a piece of paper posted at
11 each of the sites, perhaps an order from Your Honor saying what
12 the automatic stay is and does, could have the interim effect
13 that would prevent this from happening.

14 So I would, again, an unorthodox request, make a oral
15 motion that Your Honor enters an order, under the aid of the
16 automatic stay, that we'll be able to transmit to all locations
17 and hopefully put an end to this troubling activity.

18 THE COURT: Mr. Pomerantz, ordinarily I won't
19 entertain oral motions simply because of due process concerns,
20 but under the circumstances and given the fact that those
21 typical orders only restate in plain English what the law is,
22 I'm happy to do that. If you would have somebody on your team
23 upload what it is you're looking for, I will turn that around
24 immediately.

25 MR. POMERANTZ: Thank you very much, Your Honor. We



1 appreciate it.

2 So, Your Honor, according to today's activities,
3 prior to the deadline, which I'm glad the Court set at 9 a.m.
4 Central time today, we filed a motion to approve debtors-in-
5 possession financing from our existing lender group, a proposed
6 form of order, and a proposed DIP credit agreement. We also
7 filed the declarations of Michael Healy and Mr. Richards to
8 provide the evidentiary support for the motion. This is in
9 addition to the declaration of Michael Healy, which we filed
10 yesterday, which set forth the background information of the
11 debtor's business. Your Honor has now heard that speech from
12 me twice, so I will spare you of a third time and I will just
13 rely on what we have in his declaration. While the parties
14 have made substantial progress towards the consensual financing
15 at the time we filed the documents with the Court, we had not
16 yet reached a final deal with the lenders, and conspicuously
17 noted that, in the motion that we filed.

18 Since obtaining liquidity, as Your Honor is aware, is
19 critical to the debtors' survival, we made the calculated
20 decision to file the documents in hope that we would be able to
21 work out any issues that we were able to work out in advance of
22 today's hearing. And I'm pleased to report that our decision
23 paid off, as I am now able to confirm to Your Honor that we do
24 have and in fact reached a DIP financing agreement, a proposed
25 form of order, and a DIP credit agreement which everyone finds



1 acceptable.

2 Shortly before the hearing, we filed redline to the
3 motion, to the DIP order, and the DIP credit agreement,
4 reflecting certain incremental changes that, not only were
5 asked for by the lenders, but since we filed the documents in
6 the morning, as is often the case, we've had landlords, fuel
7 suppliers, reach out and request certain information to give
8 them comfort, which we've been able to put in.

9 I want to thank -- this has been a team effort. I
10 want to commend the letter -- lenders and their professionals
11 for working with us virtually around the clock through the
12 documents to reach a deal. And of course, I want to thank Your
13 Honor for making the time available for us over the last
14 several days and today as we worked through the issues.

15 So what I would like to do is I would like to walk
16 through the principled terms of the deal, which is reflected in
17 the documents. We would then seek to admit the declarations we
18 have filed, subject to cross-examination, and to the extent
19 anyone believes testimony is necessary, we're prepared to move
20 forward. The --

21 THE COURT: So --

22 MR. POMERANTZ: Is that okay, Your Honor?

23 THE COURT: Mr. Pomerantz, what I was going to
24 suggest as one slight alteration to that is, I spent all
25 morning working my way through the credit agreement, the



1 | declarations, the DIP order. Took two Diet Mountain Dews, but
2 | I made it all the way through. What I -- and again, I don't
3 | want to put my finger on the scale at all.

4 | I have two issues that I wanted to raise and I
5 | thought I'd do it in the beginning and then perhaps we take a
6 | ten-minute recess; number one because I do now see -- I had not
7 | seen 115 before I left for lunch, is to give me a -- is to give
8 | me five or ten minutes to read through the redline and also
9 | give you all the opportunity to talk about my two issues. And
10 | I don't think they're going to be too controversial, but they
11 | are extremely important to me.

12 | Issue number one -- and it's not really in the
13 | interim, but because you've reserved it for the final -- but I
14 | want everybody to know that it's going to be a -- it's going to
15 | be a big issue for me. And I think I've been consistent, at
16 | least for the past several years in making this requirement.

17 | I don't have an issue with having a lien on the
18 | proceeds of avoidance actions, but I do want it to be a last
19 | look. Then in Paragraph Number 22, with -- the way that I
20 | understand that it's been written is that you've created the
21 | maturity date, which is effectively the one -- what I'm worried
22 | about, is the default, or is the event of default. And the way
23 | it's done right now is that you file a notice and then you
24 | begin -- you can begin to exercise remedies. That is something
25 | that just doesn't meet my minimum requirements of transparency.



1 And so, Mr. Elrod -- and I'm sure that there -- I'm
2 sure that Mr. Wallen and Mr. Golden can send you some language,
3 but what I do require, and I'm happy to do it on 48 hours'
4 notice. I'm happy to do it on 72 hours' notice, whatever it is
5 you want to put in there.

6 But what I want is a short motion for relief from the
7 automatic stay to exercise default remedies and your only
8 requirement is to prove that the maturity date has occurred, to
9 use your terms, in the credit agreement. And I only do that
10 for transparency purposes. I want everyone to be able to look
11 at the docket. In case something were to happen or there were
12 to be a question, I want folks to be able to see exactly what
13 has occurred, and I want people to be able to have the
14 opportunity to voice whatever issues it is that they have.

15 But again, I will do that promptly. I am not looking
16 for you to conduct an evidentiary hearing on a typical motion
17 for relief. All I am looking for is simply that the maturity
18 date has occurred. Again, there's some standard language that
19 a lot of folks have developed that I think someone could
20 probably cut and paste or cut and send to you to see if it
21 would work for you. Happy to talk through any of those issues.

22 Again, you know, the rest of the deal points, I
23 understand. I think it's a very -- I think it's a very fair
24 DIP. I'm not bothered by the multiples of the rollup that
25 exist in this particular case, under these particular



1 | circumstances. There's nothing in this that bothers me at all.

2 | If you can find a way to accommodate my two issues,
3 | again, only one of those for today, then I think that we are in
4 | extremely good shape. Again, not having read the comments that
5 | were in 115, but I can't imagine they're going to be
6 | substantive, but I would like to go through them. Does it make
7 | sense?

8 | MR. ELROD: Your Honor, I agree, Your Honor. So --

9 | THE COURT: So --

10 | MR. ELROD: I think Jeff and I are -- or
11 | Mr. Pomerantz and I are going to say the same thing. The
12 | second point that Your Honor raised has been addressed through
13 | comments of the ever-vigilant Office of the United States
14 | Trustee.

15 | THE COURT: Okay.

16 | MR. ELROD: So I believe that language will be --
17 | will address the issue that the Court raised. The first issue,
18 | I don't know if that was addressed, but I understand the
19 | last -- but by last look, you mean avoidance action proceeds
20 | would be the last collateral that we realized on.

21 | THE COURT: Yes.

22 | MR. ELROD: Okay.

23 | MR. POMERANTZ: It is essentially a marshaling
24 | concept, which we see in a lot of DIP orders, correct?

25 | THE COURT: Absolutely. And again, I -- you know, I



1 like shorthanded terms because it sounds cool as opposed to
2 being, you know, long and drawn out. So yes, that's just my --
3 that's my last look language.

4 I do see that there are some extensive requirements.
5 I've pulled up the redline at 115, and my apologies, I just
6 hadn't seen it. Any objection? It's 2:11. If folks would
7 just give me, say, until 2:20 to let me read through the
8 redlines, I think we can probably expedite the entire process.

9 MR. POMERANTZ: That is totally fine with the
10 debtors, Your Honor. Thank you very much.

11 THE COURT: All right. Thank you. I'm not going to
12 start --

13 MR. ELROD: Thank you, Your Honor.

14 THE COURT: I'm not going to step down. I'm simply
15 going to mute the line in the courtroom. Obviously, folks are
16 free to come and go as they wish, and we'll get restarted at
17 2:20 Central time. Okay?

18 MR. POMERANTZ: Thank you.

19 THE COURT: All right. Thank you.

20 MR. ELROD: Thank you.

21 (Recess taken at 2:11 p.m.)

22 (Proceedings resumed at 2:20 p.m.)

23 THE COURT: All right, everyone. Thank you for the
24 accommodation. The time is 2:20. We are back on the record in
25 the jointly-administered cases under Case Number 23-90147,



1 Mountain Express Oil Company.

2 I -- having been through the amendments at 115 -- it
3 probably would've helped if I had been able to read that
4 beforehand. I could have been a lot shorter in my comments.
5 I, having read through them, don't have any concerns with the
6 changes that were made. Quite frankly, the clarifications, I
7 think, improved the documents overall.

8 I am extremely comfortable with where we are,
9 Mr. Pomerantz. I have read the declarations that were
10 submitted by Mr. Healy at Docket 107, by Mr. Richards at Docket
11 106. I do think that those ought to be officially moved into
12 evidence since I have read them in preparation for the hearing.
13 Do you have any objection to they're being admitted?

14 MR. POMERANTZ: I was going to ask that, Your Honor,
15 if you hadn't said it, so no objection.

16 THE COURT: Thank you. Any objection to the
17 admission of Mr. Healy's Declaration, again at 107,
18 Mr. Richard's Declaration, at 106.

19 MR. EISENBERG: Your Honor, Philip Eisenberg.

20 THE COURT: Yes, sir?

21 MR. EISENBERG: On behalf of Phillips 66 Company, we
22 had no objection yesterday. Mr. Healy's declaration was
23 admitted for purposes of the hearing only. And so, with that
24 proviso, that was -- that's the only thing I rise to mention to
25 the Court.



1 THE COURT: If I didn't say that, I meant to say it,
2 and thank you for the correction. Again, both the admission of
3 both declarations again is for purposes of today's hearing
4 only.

5 Anyone else? Then I will admit the declarations
6 found at 106, 107.

7 (ECF Numbers 106 and 107 admitted into evidence)

8 THE COURT: Mr. Pomerantz?

9 MR. POMERANTZ: Your Honor, I had the presentation to
10 go through, the terms of the DIP for the evidentiary support.
11 But I've learned as a young lawyer that if you're winning, keep
12 your mouth quiet. So unless Your Honor would like to hear me
13 recite that, I would just ask Your Honor to approve the motion.

14 THE COURT: That's fair enough. Anyone else wish to
15 be heard?

16 MR. EISENBERG: Again, Your Honor, Philip Eisenberg
17 on behalf of Phillips 66 Company, and this is really, really
18 small. But there's a footnote on Page 30, Number 4, with a
19 litany of fuel suppliers. And guess I didn't see that
20 previously, and we would just ask that in the final version
21 that Phillips 66 Company be included in the -- with the
22 (indiscernible).

23 THE COURT: So -- and so tell me, Mr. Eisenberg, I
24 was getting 115 up. So we're talking about foot - it's -- I
25 think it's footnote number 4 on Page 29 in the final order. Is



1 that what you're referring to?

2 MR. EISENBERG: Yes. The one that says "The fuel
3 suppliers include."

4 THE COURT: Okay. So hold on just one second. And
5 Mr. Pomerantz, I'm assuming that you could -- you can't
6 possibly have a concern about the addition of Phillips 66 to
7 that list of providers.

8 MR. POMERANTZ: We do not.

9 THE COURT: All right. So hold on one second because
10 I don't want -- do not want Mr. Eisenberg to suffer a nervous
11 breakdown because he's not in footnote number 4. So,
12 Mr. Eisenberg, you should see footnote number 4 on the screen.

13 MR. EISENBERG: I do.

14 THE COURT: And you know what? Because --

15 MR. EISENBERG: You can even put us first.

16 THE COURT: That's exactly what I was going to do.
17 And Mr. Eisenberg, let's see -- let's get, oops. You know
18 what? There are actually two -- because it's in a pdf, there
19 are actually two different text boxes there.

20 So, Mr. Eisenberg, I'm going to put you last, but in
21 my heart, you're first. How about that?

22 MR. EISENBERG: That is awesome, Your Honor. And as
23 everybody knows, I used to be a cab driver in New York, so I
24 don't really have nervous breakdowns. You just honk the horn a
25 lot.



1 THE COURT: Fair enough. And could you give me the
2 official name of your client that you would like to see in the
3 footnote?

4 MR. EISENBERG: Yes, Your Honor. Phillips 66
5 Company.

6 THE COURT: And it's actually only one L, isn't it?

7 MR. EISENBERG: It's two Ls, Your Honor.

8 THE COURT: It's two Ls. Okay. Then I got it right
9 the first time. All right. You okay with that?

10 MR. EISENBERG: Yes, Your Honor.

11 THE COURT: All right. Anyone else have any
12 comments, concerns -- we need to fill in a hearing date -- but
13 as to the substance of the proposed order?

14 All right. Then, based upon the declarations that
15 I've read, my own review of the credit agreement, as well as
16 the motion, the proposed form of order, I will find that
17 approval of the DIP on an interim basis is absolutely necessary
18 to the continuation of the debtor's business. The terms are
19 just given what I see on a regular basis, they are imminently
20 fair. Clear to me that it's been negotiated at arm's length.
21 And again, I don't have any concerns with any of the terms that
22 are identified within the motion and the attached credit
23 agreement.

24 Mr. Pomerantz, we had a discussion yesterday about
25 hearing dates. My memory is, and please correct me if I'm



1 wrong, that you were looking for something on like the 11th or
2 12th or 13th. Is that -- is my memory correct?

3 MR. POMERANTZ: Yes, correct, Your Honor. The 12th
4 or 13th --

5 THE COURT: 12th?

6 MR. POMERANTZ: -- would be optimal.

7 THE COURT: Okay. And did you -- and I know we had
8 this conversation about something -- did you want in the
9 morning, afternoon? It doesn't matter.

10 MR. POMERANTZ: It doesn't matter either of those
11 days. It was an -- a later date in April that the morning
12 mattered to me, but on the 12th, 13th, it's whatever Your Honor
13 has open is fine with us.

14 THE COURT: All right. And you are two hours
15 earlier, right?

16 MR. POMERANTZ: Correct.

17 THE COURT: Okay. I'm happy to do this. You want to
18 just do this at noon? Because that'd be ten o'clock your time.
19 I'm sure you'll be just out of traffic and having your first
20 cup of coffee.

21 MR. POMERANTZ: Well, I only have to go into my
22 kitchen since I work mostly at home. But Your Honor, I don't
23 want to ruin Your Honor's lunch. So if you wanted to do it
24 earlier in the morning calendar, I would accommodate that as
25 well.



1 THE COURT: That's -- let's just -- again, just
2 because we have folks all over the place, let's just go April
3 the 12th at -- that is weird; okay; hold on -- 10. You okay
4 with that?

5 MR. POMERANTZ: Yes, Your Honor. And do we need to
6 set an objection and a reply date? We would ask for objections
7 being by the 7th, and replies by the 11th.

8 THE COURT: Let's see, 12th. Let's see. The 7th is
9 Friday. Mr. Ruff, you okay with that?

10 MR. RUFF: Yes, Your Honor.

11 THE COURT: All right. Thank you.

12 All right. Then with that, I got all the
13 attachments. All right. Order has been signed and it's on its
14 way to docketing. It'll be there in just a couple of -- in
15 just a couple of minutes.

16 Mr. Pomerantz, and I had another thought while I was
17 thinking about the emergency situation that you were describing
18 to me. And number one, I do think an order that could be
19 handed out, posted about the effect of the automatic stay,
20 entirely appropriate. I'm happy to do it.

21 What really bothers me is those folks who've come in
22 and violated the automatic stay and have affected the integrity
23 of the process that I am responsible for overseeing. And what
24 I was contemplating was perhaps a second order that could be
25 delivered to folks who may have inadvertently violated the law



1 and exercised self-help, that would require them to return, at
2 their expense, all items taken from any of the debtors'
3 locations within 48 hours, or be subject to a motion for
4 contempt, which would be held in-person, no telephonic
5 appearances permitted, in Houston. It seems to me that perhaps
6 that might help send the right message to folks that there is a
7 process that we all must abide by.

8 MR. POMERANTZ: I think that would be very well
9 received by the people in the field and would be appropriate in
10 order to get them to comply to the extent that we won't see
11 them again.

12 THE COURT: So, okay. I'm going to draft that order
13 and it will be -- I'm just going to sit right here and get it
14 done right now because that would seem to me to be important.
15 I obviously also want to make sure that all of the employees
16 feel safe and if there's anything else that needs to be done, I
17 want to make sure that we all put our heads together and come
18 up with a solution that makes those folks feel comfortable
19 coming to work every day. Okay?

20 MR. POMERANTZ: Your Honor, on behalf of the debtor,
21 we are appreciative of your sensitivity to the issues and the
22 way you're handling it. So point taken. And we know Your
23 Honor's courtroom door is always open.

24 THE COURT: All right, thank you. And then with
25 respect to just the effect of, you know, the worldwide effect



1 of the automatic stay order, again, shouldn't take too long.
2 But if you would just get that done, get it uploaded, pass it
3 by anybody that needs to see it, and then let Mr. Alonzo know
4 once it's been uploaded, I will immediately turn that around.

5 MR. POMERANTZ: I understand Mr. Wallen is drafting
6 away as we speak.

7 THE COURT: I see him. I don't see his hands moving,
8 but you know, he is -- there he goes. All right. Fair enough.
9 I asked for that.

10 All right. With that, again, thank you everyone for
11 working through the issues. I -- I'm here if I'm needed.
12 Otherwise, I will let you all go do what I know how you -- what
13 I know you know how to do very well.

14 Mr. Richards, you got tough tasks in front of you.
15 Get to work. I want you to look sleepy next time I see you.
16 Okay?

17 MR. RICHARDS: Thank you, sir. Bags under the eyes
18 next time.

19 THE COURT: All right. Thank you. Everyone, have a
20 good weekend. We'll be adjourned.

21 MR. POMERANTZ: Thank you, Your Honor.

22 MR. RICHARDS: Bye-bye.

23 (Proceedings concluded at 2:31 p.m.)

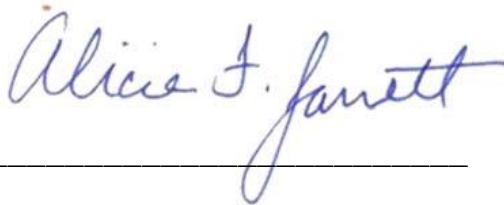
24 * * * * *

25



C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
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ALICIA JARRETT, AAERT NO. 428

DATE: March 27, 2023

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